IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 556 OF 2005

IN

SUIT NO.1297 OF 2005

M/s. Hemant Brothers .. Plaintiffs.

vs.

Mrs. Mona Vijay Desai

& Ors. .. Defendants.

Mr. Sanjay Udeshi for plaintiffs.

Mr. Shashi Jain with Mrs. Naina Desai

for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 20th February, 2006.

P.C.

. The present suit is filed for recovery of sum of Rs. 2,60,000/- in respect of two dishonoured cheques of Rs. 1 lac each. Further claim is made for interest at the rate of 18% per annum. The learned counsel for the defendant has firstly contended that the claim is not maintainable as it arises out of running account. In support of his contention he has relied upon a deposition made by the plaintiff in criminal prosecution. I do not

find any substance in the said contention in light of the fact that the claim is not made on any running account but is made on the dishonoured cheques which are admitted dishonoured by the deceased husband of defendant no. 1. The next contention raised is that there was no advertisement issued in respect of which cheques are issued. Under the Negotiable Instruments Act, 1881 consideration is presumed in respect of the dishonoured cheque and there is no need to investigate the original cause of action. Furthermore, once having issued the cheques, it is not open to the defendants to contend that once having issued the cheques by the deceased husband the defendants who are legal heirs are not entitled to contend that there was no advertisement issued at all. The last contention is that there is no agreement to pay interest. Under Section 80 of the Negotiable Instruments Act the plaintiffs are entitled to interest at the rate of 18% per annum which is statutorily recognised interest and, thus, there is no substance in any of the defences raised. The summons for judgment is made absolute. Suit decreed. Refund of Court fee as per rules.

2. The learned counsel appearing for the defendants seeks stay of the decree. Stay granted for the period of two weeks.